

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**  
**DIVISION OF ST. CROIX**

**MOHAMMAD HAMED**

Plaintiff

Vs.

**FATHI YUSUF**  
**UNITED CORPORATION**

Defendants

CIVIL NO. SX-12-CIV-370

**CIVIL ACTION**

**ACTION FOR DAMAGES**

**DEFENDANTS' MOTION TO CLARIFY  
SCOPE OF PRELIMINARY INJUNCTION  
AS TO UNITED'S FINANCIAL  
STATEMENTS & UNRESTRICTED  
ACCESS TO UNITED'S FINANCIAL  
SYSTEMS**

**DEFENDANTS' MOTION TO CLARIFY SCOPE OF PRELIMINARY  
INJUNCTION AS TO UNITED'S FINANCIAL STATEMENTS & UNRESTRICTED  
ACCESS TO UNITED'S FINANCIAL SYSTEMS**

**COME NOW**, Defendants United Corporation and Fathi Yusuf and respectfully move this honorable court for an Order clarifying the scope of disclosure of United Corporation's financial statements, the intended use of the financial documents, and the dissemination of same. In addition, this Motion is necessary to preclude the now deadlocked management, and to address the endless false allegations by Plaintiff's designee concerning Defendants' compliance with the Court's Preliminary Injunction.

As grounds for said Motion, Plaintiffs rely on the attached Memorandum of Law in Support thereof, and Exhibits A - G annexed thereto. A proposed Order is attached herewith.

**WHEREFORE**, Defendants respectfully request an expedited hearing and an Order clarifying the scope of United's disclosure of financial statements.

Date: May 16, 2013

**Respectfully Submitted,**

**DEWOOD LAW FIRM**  
Attorneys for Plaintiffs

By: */s/ Nizar A. DeWood*  
Nizar A. DeWood, Esq.  
(VI Bar No. 1177)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of May, 2013, I caused a true and exact copy of the foregoing Motion To Clarify Scope of Preliminary Injunction regarding United's Financial Statements and Access to United's Financial Systems, Memorandum of Law and Exhibits A through G, and Proposed Order to be served on counsel for the Plaintiff at the below address via mail and email.

Joel H. Holt  
Law Office of Joel H. Holt  
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Christiansted, VI 00820  
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Carl Hartmann, Esq.  
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carl@carlhartmann.com

*/s/ Nizar A. DeWood*

Nizar A. DeWood

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
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**MOHAMMAD HAMED**

Plaintiff

Vs.

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UNITED CORPORATION**

Defendants

CIVIL NO. SX-12-CIV-370

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ORDER

**ORDER**

Before this Court is Defendants Motion to Clarify Scope of Preliminary Injunction regarding Access to United's Financial Statements, Computer Passwords, etc., an evidentiary hearing was held on the \_\_\_\_ day of \_\_\_\_\_, 2013; the Court duly apprised in the premises, and the Memorandum of Law in Support thereof, it is hereby

**ORDERED** that the Motion is **GRANTED**;

**ORDERED** that Defendant United Corporation shall provide revised financial statements for Plaza Extra Stores only within 30 day of date of this Order.

**ORDERED** that Defendant United Corporation's financial statements shall be used for internal purposes only, and may not be disseminated to any third parties without the written consent of United Corporation.

**ORDERED** that only mutual access of all sensitive financial data, records, financial statements shall be permitted.

**ORDERED** that copies of this Order be served on the parties of record.

**ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
**HON. DOUGLAS BRADY**  
**SUPERIOR COURT JUDGE**

**ATTEST:**

Venetia H. Velazquez, Esq.

Clerk of the Court

By: \_\_\_\_\_

DEPUTY CLERK

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF  
UNITED CORPORATION

Defendants

**CIVIL NO. SX-12-CIV-370**

**CIVIL ACTION**

**ACTION FOR DAMAGES**

MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' MOTION TO CLARIFY  
SCOPE OF PRELIMINARY INJUNCTION  
WITH RESPECT TO UNITED  
CORPORATION'S FINANCIAL  
STATEMENTS, AND ACCESS TO  
UNITED'S FINANCIAL SYSTEMS

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO CLARIFY  
SCOPE OF PRELIMINARY INJUNCTION WITH RESPECT TO UNITED  
CORPORATION'S FINANCIAL STATEMENTS, AND ACCESS TO UNITED'S  
FINANCIAL SYSTEMS**

**COME NOW**, Defendants United Corporation and Fathi Yusuf and respectfully file this Memorandum of Law in Support of Defendants' Motion to Clarify Scope of Preliminary Injunction Order with Respect to United Corporation's Financial Statements, right of access to sensitive financial data and trade secrets, access to passwords and computer codes, and third party access to United's financial statements. In light of the Court's preliminary injunction forcing a purported general partner, Defendant Yusuf, to jointly manage an at-will "partnership" with four designees of a disabled and retired partner, this Court should clarify its sweeping preliminary injunction with respect to 1) the scope of access to United's financial statements, 2)

the protection of passwords to critical financial systems, 3) the period of time United is required to provide a designee of Plaintiff Hamed with financial statements.

For the below reasons, that court should grant this Motion, and conduct a full evidentiary hearing to determine the appropriate parameters for disclosures of Defendant United's financial data and secrets.

## **I. PRELIMINARY BACKGROUND**

On April 25<sup>th</sup>, 2013, this Court issued a Preliminary Injunction Order, which provides among other things:

**ORDERED** that the "operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years **prior to this commencement of this litigation**, with Hamed, or his designated representatives, and Yusuf, or his designated representatives, jointly managing each store, without unilateral action by either party, or representatives affecting the managing, employees, methods, procedures and operations.

Out of abundance of caution, Defendants seek clarification of this Court's order as to the dissemination of financial documents, trade secrets, access to its computers as well as to restrict which parties may view these materials.

More importantly, Defendants seek to address the continuous and baseless allegations of misconduct that seem to be Plaintiff's theme from day one in this litigation. Frankly, whether it is allegations of Defendant Yusuf "screaming" and "threatening" to close the stores, to baseless allegations of employee threats and intimidation, to allegations of Defendants finally crossing the "Rubicon" this Court has been unusually swayed by these sensational allegations without a single fact supporting them, other than the self-serving testimony of Waleed Hamed, Mufeed

Hamed, and Waheed Hamed. Unfortunately, this Court never noted that each of these individuals is the subject to a civil lawsuit for conversion, accounting, breach of contract, and unjust enrichment. What else will a Hamed designee testify to other than highly charged emotionally baseless allegations against Defendant Yusuf?

Now new allegations of the Defendants acting in bad faith is coming from Attorney Carl Hartmann as a pretext to Hisham Hamed's request for financial statements. This of course is to impart the impression of uncooperative Defendants who have no regard for this Court's Preliminary Injunction order. According to the Plaintiff, first, it was scary Defendant Yusuf shutting down everything and intimidating the employees and suppliers. Of course, these allegations were accepted by the court with nothing more than the oral testimony of Hamed designees who themselves are being sued for financial misconduct by the Defendants.

Now Plaintiff launch another sensation: Defendants refuse to respect the Court's order. This has forced Defendants to seek the Court's intervention in all matters that may be construed as falling within the ambit of the Court's Preliminary Injunction Order. As such, this Motion is appropriate to outline critical facts concerning the past management practices at United Corporation as they pertain to the operations of the Plaza Extra stores, and the need to maintain appropriate security and mechanism in place to resolve this case.

There is no dispute that Defendant Fathi Yusuf has always been the ultimate decision maker. This was the status quo then, and it should remain so now. The court order states in no uncertain terms in its Preliminary Injunction Order "that the "operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation." Preliminary Injunction Order.

Now Defendant Yusuf is forced to co-manage an at-will oral “partnership” with designees that are the subject of several lawsuits for accounting, conversion, breach of contract, and constructive trust. Additionally, as recently as March 17<sup>th</sup>, 2013, Waleed Hamed, Mufeed Hamed have displayed nothing short of contempt for the assets and funds of Plessen Enterprises, Inc. to enrich the personal interest. Waleed Hamed and Mufeed Hamed issued a check drawn on Plessen’s operating account causing Plessen to become immediately unable to pay its short term obligations. This behavior of Plaintiff’s own designees is the root cause of Defendants desire to cease their business relationship with Plaintiff Hamed.

While Defendants respectfully disagree with the Court’s sweeping Preliminary Injunction Order<sup>1</sup>, Defendants desire to ensure that the terms of the Preliminary Injunction Order is clear. The current untenable situation between the purported general partner Defendant Yusuf and designees of Plaintiff Hamed has rendered operations of Plaza Extra impossible.

Based on the below points of facts and legal authority, and reincorporating the facts and arguments of Defendants’ May 9<sup>th</sup>, 2013 Motion to Modify the Preliminary Injunction Order to Terminate certain employees of United Corporation, Defendant respectfully request an immediate hearing to determine the scope of access to United’s financial systems and information.

## **I. FACTS**

1. On September 17<sup>th</sup>, 2012, Mohammed Hamed filed a civil action against Defendants seeking a judicial declaration of a partnership, along with a Motion for Temporary

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<sup>1</sup> Defendants have filed an Emergency Motion to Stay Enforcement of the Preliminary Injunction; Motion for Bond Redetermination, and a Motion to Permit the Termination of Employees Waleed Hamed, Mufeed Hamed, and Wadda Charriez.



Restraining Order/or Preliminary Injunction. Plaintiff renewed same TRO Motion on January 8<sup>th</sup>, 2013.

2. On October 17<sup>th</sup>, 2012, Defendants filed a Rule 12(b)(6) Motion, which to date remains pending before this court.

3. On January 25<sup>th</sup> and February 1<sup>st</sup>, 2013, the Court held a hearing on Plaintiff's Preliminary Injunction. At the hearing, the following pertinent facts emerged:

- a. The parties entered into an oral agreement in 1986, where each party is entitled to fifty percent (50%) of the profits of the operations of the Plaza Extra stores.
- b. Defendant Fathi Yusuf has been the exclusive decision maker, and has undertaken all liabilities concerning the operations of the supermarkets.
- c. Defendant Fathi Yusuf has always been the sole decision maker. Plaintiff Hamed testified that Defendant Yusuf is in "charge of all three stores." *January 25th, 2013 TRO Hearing 210:21-24, EXHIBIT D.*
- d. In 1996, Plaintiff Hamed retired. A power of attorney was prepared authorizing Waleed Hamed to act on Plaintiff Hamed's behalf. Plaintiff Hamed testified that he "cannot do nothing" in the stores since 1996 because of his illness. *January 25th, 2013 TRO Hearing 210:21-24, EXHIBIT D.*
- e. In March 2012, Plaintiff received a document titled "Notice of Dissolution of Partnership." The Court acknowledged the dissolution notice, but noted that the parties did not agree to the terms. This notice of dissolution which would have effectively terminated the purported partnership was ignored by the court with respect to its legal effect.

4. On April 25<sup>th</sup>, 2013, the Court granted Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, and found that Plaintiff was likely to prevail on the merits concerning the existence of an at-will oral partnership.
5. On March 27<sup>th</sup>, 2013 Mufeed Hamed, and his brother Waleed Hamed, signed and executed a check in the amount of \$460,000 payable to Waleed Hamed drawn on an account from Plessen Enterprise, Inc. ("Plessen"). *See* Check No. 376 attached as **Exhibit C**.
6. Plessen Enterprises, Inc., ("Plessen") a duly organized Virgin Islands real estate holding company, saw its operating bank account effectively reduced to almost zero as a result of Mufeed Hamed and Waleed Hamed's unlawful conduct of issuing a check for \$460,000 without authorization or notice to Plessen for their personal gain.
7. Because of Mufeed and Waleed Hamed's unlawful conduct which demonstrates these employees lack of loyalty and diligence in matters relating to custody of funds, an appropriate civil suit has been filed, captioned as *Yusuf v. Waleed Hamed, Mufeed Hamed, et al.*, Case No. SX-13-CV-120 to vindicate Plessen's interest as well as those of its shareholders. This case remains pending and has been assigned to the Honorable Harold Willocks of the Virgin Islands Superior Court, St. Croix Division.
8. On May 9<sup>th</sup>, 2013, Defendants filed a Motion to Modify the April 25<sup>th</sup>, 2013 Preliminary Injunction Order to terminate the employment of Waleed Hamed, Mufeed Hamed, and

Wadda Charriez. The grounds for the termination of each of these employees is outlined in Defendants' Motion.

**Plaintiff's New Allegations**

9. On May 3<sup>rd</sup>, 2013, Plaintiff's son Hisham Hamed requested for the first time in 27 years a copy of financial statements for the Plaza Extra Stores. Although it is unclear as to why Hisham Hamed has taken a sudden and immediate interest in these financial statements. Hisham Hamed was advised by both Defendant United's President and Comptroller John Gaffney that same financial statements would be provided within the coming weeks.
10. When asked about the purpose of the financial statements, Hisham Hamed refused to answer. When Defendant United inquired as to which third parties these statement would be viewed by, Hisham Hamed still refused to answer, other than to say that the Court's order says so. See *Affidavit of Maher Yusuf*, **EXHIBIT A**. See *Affidavit of John Gaffney*, **EXHIBIT B**.
11. Between May 3<sup>rd</sup> and May 14<sup>th</sup>, 2013, an unexplained flurry of emails with numerous allegations were sent by Attorney Carl Hartmann to Defendants' counsels. These emails contained baseless accusations of Defendants' failure to abide by the terms of the Preliminary Injunction Order by refusing to provide Hisham Hamed with immediate financial statements.
12. Hisham Hamed then began requesting access to the passwords of critical financial systems. United Corporation became very concerned about Hisham Hamed's sudden interest to immediately access critical information without supervision, especially when

Hisham Hamed has never accessed the financial information on United's accounting systems. This concern arises out of the following series of events:

- a. On January 9<sup>th</sup>, 2013, United saw the unexplained loss of virtually its entire corporate files in its Plaza Extra Sion Farm location. Virtually every documents, bylaws, and corporate documents were completely removed from the Plaza Extra store in Sion Farm, St. Croix location. See *Affidavit of Maher Yusuf*, attached as **EXHIBIT A**.
- b. On December 18<sup>th</sup>, 2012, United's St. Thomas accounting system was completely "wiped out" in the Tutu Park, St. Thomas location. Fortunately, accountant Ayman Khalid and comptroller John Gaffney had made a backup of the system, and were able to restore it on St. Croix. See *Affidavit of John Gaffney*, **EXHIBIT B**.

13. On May 9<sup>th</sup>, 2013, Attorney Carl Hartmann sent an email to the undersigned counsel alleging that United does not wish to provide Hisham Hamed with financial statements. See May 9<sup>th</sup>, 2013, Hartmann email as **EXHIBIT E**.
14. On May 10<sup>th</sup>, 2013, Attorney Hartmann sent another email. This time with more sensational hearsay allegations by no one other Hisham Hamed. See May 9<sup>th</sup>, 2013, Hartmann email as **EXHIBIT F**.
15. In a span of a week, there has been a concerted effort to portray Defendants as defying the Court's Preliminary Order.

16. Each of the allegations in those emails are over exaggerated and conceal Defendants own valid concerns as to the use, access, and security of Defendant United's systems. *See Affidavit of Maher Yusuf, EXHIBIT A.*
17. With major civil actions pending against Plaintiff Hamed's designees Waleed Hamed, Mufeed Hamed, and Waheed Hamed, Defendant United inquired of Hisham Hamed about the need to properly supervise all access to its financial information, computers, and systems.
18. To date, Plaintiff Hamed has not set foot in any of the stores, and is virtually without knowledge as to a single fact on the ground at any of the Plaza Extra Stores, other than through what his designees tell him. The same designees who are the subject of numerous law suits for various misconduct, and are at extreme odds with the purported managing partner.
19. With these security breaches occurring, and with the Court's Preliminary Injunction Order essentially forcing Defendant Yusuf to work jointly with designees who are accused of embezzlement of funds, Defendants seek a Court order restricting the access to sensitive financial information, and limit the supervision of all parties.

## II. ISSUES

1. Whether the Court should clarify the April 25<sup>th</sup>, 2013 Preliminary Injunction Order, and order proper security measures for Defendant United's financial systems, documents, and restrict the access of these information to the proper parties?

### III. ARGUMENTS

#### A. Standard of Review: Modifying Preliminary Injunction Orders

A court can modify a preliminary injunction order for reasons of equity in light of changes in the facts or for any other good reason. *Loudner v. U.S.*, 200 F.Supp. 2d 1146, 1148 (D. S.D. 2002). As the Ninth Circuit explained, “[a] district court has inherent authority to modify a preliminary injunction in consideration of new facts.” *A & M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir.2002) (citing *Sys. Fed'n No. 91, Ry. Employees' Dep't v. Wright*, 364 U.S. 642, 647–48, 81 S. Ct. 368, 5 L.Ed.2d 349 (1961); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 810 (9th Cir.1963)).

In Third Circuit, modification of preliminary injunction is proper only when there has been change of circumstances between entry of injunction and filing of motion that would render continuance of injunction in its original form inequitable....*Tehan v. Disability Mgmt. Servs., Inc.*, 111 F. Supp. 2d 542 (D.N.J. 2000).

Because of changed factual circumstances, mainly the sudden and inexplicable immediate demand for financial statements, access to United’s financial systems, and in light of previous security breaches, this court may conduct a hearing to determine the scope of access and third party supervision of United’s financial systems.

#### B. With Deadlocked management, the Court must issue an order clarifying the scope and access to Defendant United’s financial systems.

As stated in Defendants’ previous Motions, it is well settled that partners may agree that one or more of them will have exclusive control over the management of the partnership business, so that a managing partner, a designated number of named partners, senior partners, or

voting partners can be given the exclusive control of the partnership business. Here, the record is clear that Defendant Fathi Yusuf<sup>2</sup> is the person responsible for all management decisions, and the operation of the three Plaza Extra Stores as illustrated by Plaintiff Hamed's own testimony "**Mr. Fathi the one. He in charge for it**" and that Defendant Yusuf is in charge "**for all the three store.**" January 25th, 2013 TRO Hearing 210:21-24, **EXHIBIT D.** (Emphasis Supplied). "**Mr. Yusuf he is in charge for everybody**". January 25th, 2013 TRO Hearing p. 201:2-5, **EXHIBIT E.** (Emphasis Supplied).

**C. Because Plaintiff Hamed has never managed the affairs of the Purported "Yusuf and Hamed" Partnership, and to be unable to do so, the Court must clarify how Plaintiff's designees may access critical financial systems belonging to Defendant United.**

Even when the Court declared the likelihood of the existence of an at-will oral partnership, the Court did not consider the fact that Plaintiff Hamed is utterly incapable of managing the affairs of this previously non extant "Yusuf & Hamed partnership." As Plaintiff Hamed has stated so eloquently, "**getting old. I can't do nothing.**"

This Court also failed to consider that the Preliminary Injunction Order has resulted in the untenable situation of forcing Defendant Yusuf, who by the Court's own finding is a full purported partner, to manage the store with three Hamed designees whose personal interests are at extreme odds with those of Defendant Yusuf. In its Preliminary Injunction Memorandum Opinion the Court's quick reference to allegations of financial misconduct by designee Waleed Hamed failed to appreciate the conflict that has made management impossible.

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<sup>2</sup> The Court has deemed for purposes of the Preliminary Injunction that Fathi Yusuf is a purported partner of a partnership called the "Yusuf and Hamed" partnership.

Thus before the Court is the following question: How can the Court force a partner to work with the other partner's designee who being accused of outright theft and are the subject of numerous lawsuits by the managing partner?

**D. A Clarifying Order is Necessary to Protect The Confidential Financial Information of Untied Corporation.**

At this point, before the Court is the following surreal situation:

1. A purported partner, Mohammed Hamed who "can't do nothing" has appointed four designees, three designees of which are the subject of various lawsuits for accounting, conversion, breach of contract, and constructive trust.

2. The disappearance of United's entire corporate file from the Plaza Extra – East store, especially when these files have existed for decades without problem, only to conveniently disappear at the outset of the dispute between Defendant Yusuf had with Waleed Hamed regarding defalcated funds.

4. The unexplained computer failure of the financial system on December 15<sup>th</sup>, 2012, and the unusual inquiry by Waheed Hamed for a backup of the data. This is especially suspect since Waheed Hamed had never utilized the computer system containing virtually all of the financial records of Plaza Extra.

See *Affidavit of Maher Yusuf*, **EXHIBIT A**; See *Affidavit of John Gaffney*, **EXHIBIT B**.

It is well established that the power to manage a partnership is not a delegable power that a partner can simply assign to another person without the express consent of the other managing "partner" especially one as Defendant Yusuf who from the outset of this joint venture /



partnership / business agreement has been the driving force in managing all affairs of the Plaza Extra operations.

Here, Waleed Hamed is asked to explain how he acquired millions of dollars' worth of securities listed in detailed fashion in his 1992 and 1993 Tax Returns. Defendant Hamed not only refuses to provide an explanation to his employer, but has taken it upon himself to defend his position by filing procedural defenses, instead of coming forward with a full accounting and documents addressing Defendants concerns. To expect a managing partner to co-manage an operation with someone he views as having defalcated substantial assets from the operations of the Plaza Extra Stores is untenable. As such, appropriate restrictions must be placed to ensure that all financial information, passwords, and passcodes are properly protected.

#### **IV. CONCLUSION**

The Court should enter a detailed and clear Order protecting the financial statements, computer and accounting systems of United Corporation. The Court's Preliminary Injunction Order is vague as to these issues. Further, because the Court is now forcing a purported managing partner to operate a business with Plaintiff designees that are the subject of several lawsuits for conversion, theft, and breach of contract, among others, the Court should clarify the scope of access to United's financial statements.

Finally, Plaintiff Mohammed has made clear that he "cannot do nothing" in reference to his ability to manage any of the affairs of the partnership or joint venture. This has been the case for the last 17 years. Plaintiff Mohammed Hamed's designees are now engaged in numerous civil actions with the Defendants. Because the Court is now forcing Defendant Fathi Yusuf to

maintain a working relationship with Plaintiff Hamed's designees who have engaged in various misconduct, the Court should immediately reconsider its April 25<sup>th</sup>, 2013 Preliminary Injunction Order.


As such, the Court should grant this Motion to Modify the Preliminary Injunction Order, and allow Defendant Yusuf to exercise his full rights, whether as the sole general managing "partner" or as a corporate officer of United Corporation.

Date: May 16, 2013

**Respectfully Submitted,**

**DEWOOD LAW FIRM**  
*Attorneys for Plaintiff*

By: \_\_\_\_\_

  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of May, 2013, I caused a true and exact copy of the foregoing Motion to Clarify and Proposed Order to be served on counsel for the Plaintiff at the below address and by email.

**Joel H. Holt**  
**Law Office of Joel H. Holt**  
**2132 Company Street**  
**Christiansted, VI 00820**

**Carl Hartmann, III**  
**5000 Estate Coakley Bay, L-6,**  
**Christiansted, St. Croix, VI 00820**

*/s/ Nizar A. DeWood*

Nizar A. DeWood

# **EXHIBIT**

**A**

**AFFIDAVIT OF MAHER YUSUF**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

MOHAMMAD HAMED

Plaintiff

Vs.

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UNITED CORPORATION

Defendants

**CIVIL NO. SX-12-CIV-370**

**CIVIL ACTION**

**ACTION FOR DAMAGES**

**AFFIDAVIT OF MAHER YUSUF**

**AFFIDAVIT OF MAHER YUSUF**

I, Maher Yusuf, pursuant to 28 USC §1746, under penalty of perjury, attest that,

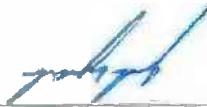
1. I am the President for United Corporation, and I manage the Plaza Extra – West store.
2. On May 3<sup>rd</sup>, 2013, Hisham Hamed asked for financial statements from John Gaffney for all three Plaza Extra stores. Mr. Hamed brought a copy of the court order and memorandum opinion along with his request. After May 4<sup>th</sup>, Hisham began making these requests on a daily basis.
3. I have worked with Hisham Hamed for the last 12 years. Hisham has never made a single request for financial statements. He certainly never made these requests on a daily basis. Also, he has never asked for the password for the accounting system. Hisham has no training on how to use the system.
4. I also advised Hisham that United Corporation has never issued financial statements for Plaza Extra stores, and to do so would require more time. Despite that I instructed John

Gaffney to provide him with the available profits & loss statements for 2011 which dealt with the operations of the Plaza Extra Stores.

5. Hisham's sudden requests and refusal to discuss any restrictions on the use of the financial statements and unrestricted access to the accounting system has raised serious security concerns especially because of the complete meltdown of our financial system and computer in the Plaza Extra Store in St. Thomas on December 18<sup>th</sup>, 2012. At that time, the hard drive failed inexplicably and completely. If it was not for the backup that our controller John Gaffney put in place, we would have lost virtually everything, including tax records, and employee records among other things.
6. I told Hisham Hamed that providing password with full access to a vital financial system raises serious concerns. I asked why he wanted all of this access so suddenly, he refused to answer. He would not even agree to discuss a supervised access of the accounting system.
7. Moreover, on January 9<sup>th</sup>, 2013, I noticed that the entire United Corporation file went missing from the Plaza Extra – East store. Not a single document could be found of the original bylaws, corporate charter, and other critical documents. These documents have existed for decades without problem.
8. I approached Wadda Charriez, the office manager about the file. She stated that Waleed Hamed had the file. I asked Waleed Hamed about the file, he told me that he did not have it, and to check back with Wadda Charriez.
9. It is unfortunate that United's original file would go missing and conveniently disappear after the dispute arose between United and Fathi Yusuf arose with Waleed Hamed.
10. With a missing large file with all of United Corporation's original documents, and a destroyed computer drive in December of 2012, the court must protect the unobstructed access of United's critical financial systems.
11. At this point, United has two pending lawsuits against Waleed Hamed and Waheed Hamed because of missing funds, and other conduct. This makes it next to impossible to provide Hisham Hamed with unrestricted access to United's accounting system.
12. To ensure that United does not act in a manner contrary to the court order, United is filing the Motion to clarify the preliminary injunction to obtain an Order from the court to protect United's financial system

13. Security of United Corporation's financial systems is very important and should not be given to untrained managers or individuals without proper supervision. The court should put in place the proper restrictions, including who may access such financial information and systems and under whose supervision.

Date: May 15, 2013



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Maher Yusuf, as president of United Corporation

**EXHIBIT**

**B**

**AFFIDAVIT OF JOHN GAFFNEY**



IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

MOHAMMAD HAMED

Plaintiff

Vs.

FATHI YUSUF  
UNITED CORPORATION

Defendants

CIVIL NO. SX-12-CIV-370

CIVIL ACTION

ACTION FOR DAMAGES

AFFIDAVIT OF JOHN GAFFNEY

AFFIDAVIT OF JOHN GAFFNEY

I, John Gaffney, pursuant to 28 USC §1746, under penalty of perjury, attest that,

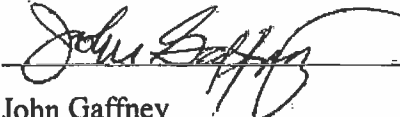
1. I am the Comptroller for United Corporation, and as such I am aware of the facts contained herein.
2. On May 3<sup>rd</sup> 2013, Hisham Hamed requested financial statements for the Plaza Extra stores in writing along with a copy of recent court order and memorandum opinion, his request was also for a system password.
3. I advised him that I would have the Profits & Loss statements for 2011 ready shortly. As to 2012, I advised him that I would require an additional two months. The reason for this brief delay is due to the fact that United's accounting system is still being implemented, and much of the information for the last two months of 2012 was not provided from the previous comptroller as initially agreed.
4. In addition, I have spent significant time to implement the proper accounting system, training of employees, and record reconciliation which is required by the Plea Agreement.

5. Then Hisham Hamed requested the password to Peachtree Accounting database. Hisham's requests for financials and passwords were a daily occurrence. At one point, I told him I didn't think the provision of system passwords should come from me.
6. As an accountant for almost 40 years, it is highly unusual for a manager to request access to the entire financial database. The reason being is to preclude tampering, and avoid unauthorized access that may occur when system is not logged off. Most importantly, it prevents the corruption of the database.
7. Hisham has not indicated to me why he needs the password to the accounting system, especially after the sudden and unexplained failure of the system in the Plaza Extra Store in St. Thomas. I implemented a backup system when I began my employment in October of 2012. Were it not my specific instructions to Nejeih Yusuf, one of the managers of the Plaza Extra store in St. Thomas, United would have lost virtually all accounting and financial information.
8. Notwithstanding the backup, we did lose some vital support records and had to reconstruct other work
9. On December 18<sup>th</sup>, 2012, I was advised that the entire hard drive crashed. I have requested Waheed Hamed to provide me with the actual drive to send to a hard drive retrieval service in Florida.
10. If it wasn't for the backup it would have been virtually impossible to do any of the regulatory quarterly VIESA report, W-2s for 2012 for the employees, and other tax obligations of United Corporation.
11. On December 24<sup>th</sup>, 2013, I asked Ayman Khaled to obtain the hard drive so we could attempt data recovery. Ayman made repeated requests to Waheed Hamed, but the hard drive was never provided to me, nor to any of United's corporate officers.
12. Security and redundancy are paramount in every accounting system. Passwords to such critical financial systems should not be given to untrained managers or individuals without proper supervision. Messers. Hamed have no general accounting training and have no specific training related to the financial databases that are the subject of the passwords they seek. This lack of training and inability to operate the systems properly will likely lead to corruption of the databases and a myriad of problems that will result from such corruption.

13. While the Hamed designees are entitled to view information, and request copies of reports, data, and completed financial statements, providing direct access to the computer databases of a financial system could easily result in the same being compromised. As such, providing a password to untrained and unfamiliar persons is against sound financial and management policy.

14. I attest that the above is true to the best of my knowledge.

Date: May 15, 2013

  
John Gaffney

# **EXHIBIT**

## **C**

**Check No. 376**

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PLESSEN ENTERPRISES, INC.  
P.O. BOX 763  
C STED., VI 00821

0376  
101-606-218

PAY TO THE ORDER OF Waleed Hamed

30585-002 045  
THE BANK OF NOVA SCOTIA  
BY DEPOSIT  
MAR 27 2013  
\$460,000.00  
DOLLARS

Scotiabank  
THE BANK OF NOVA SCOTIA  
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# **EXHIBIT**

## **D**

*January 25th, 2013 TRO Hearing 210:21-24*

1           A     Nobody else.  If I die or I -- after I give my  
2 son the power of attorney, yes, he could because I'm not  
3 working.  I getting old.  I can't do nothing.

4           Q     How long is your partnership with Mr. Yusuf  
5 supposed to last?  When does it end?

6           A     Forever.  We start with Mr. Yusuf with the  
7 supermarket and we make money.  He make money and I make  
8 money, we stay together forever.

9           MR. DAVID:  Okay.  One moment, Your Honor, I  
10 maybe done.

11                   **(Discussion off the record.)**

12 BY MR. DAVID:

13           Q     Sir, have you ever signed any -- strike that.  
14 Are you aware that there is a lease?

15           A     I don't know.  I didn't hear you.

16           Q     Is there a lease for the St. Thomas store?

17           A     Lease?

18           Q     Lease.

19           A     To St. Thomas store?

20           Q     Yes, sir.

21           A     Mr. Fathi the one.  He in charge for it.

22           Q     What other stores is Mr. Fathi in charge of?

23           A     For all the three store.

24           Q     That's all I have, sir.  Thank you.

25           A     You're welcome.

# **EXHIBIT**

## **E**

**January 25th, 2013 TRO Hearing p. 201:2-5**



1           A     Yes, sir.

2           Q     And who is your oldest son? Who is your oldest  
3 son?

4           A     Mr. Yusuf he is in charge for everybody.

5           Q     What is your oldest son's name? Who is your  
6 oldest son?

7           A     My oldest son is Waleed Hamed.

8           Q     And did there come a time that you stopped  
9 working in the business every day?

10          A     No.

11          Q     Okay. Tell me what you did in the business?

12          A     He used to work with me and in the supermarket,  
13 without payment before we open. They build a beam and  
14 they have somebody from St. Lucia, Charlie, he used to  
15 work, and he will help him hold the beam with him until 12  
16 o'clock in the night.

17          Q     Okay. After a while did you get the supermarket  
18 open?

19          A     After the work in the supermarket.

20          Q     Okay.

21          A     And Mr. Yusuf tell me, you is my partner, not  
22 your son. Your son employees, the two, 4.65 an hour, and  
23 I like any employees. I tell him I'm not saying nothing,  
24 you is my partner. Whatever you say I agree with you.

25          Q     Okay.

# **EXHIBIT**

## **F**

**EMAIL from Carl Hartmann dated May 9<sup>th</sup>, 2013**

**From:** [Carl Hartmann](#)  
**To:** [dewoodlaw@gmail.com](mailto:dewoodlaw@gmail.com)  
**Subject:** A very polite request  
**Date:** Thursday, May 09, 2013 9:40:18 AM

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<http://www.federal-litigation.com/Cases/Jackson%20Contempt%20Brief.pdf>

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<[shawnhamed@yahoo.com](mailto:shawnhamed@yahoo.com)>

[shawnhamed@yahoo.com](mailto:shawnhamed@yahoo.com)>

[johnhaffney@tampabay.rr.com](mailto:johnhaffney@tampabay.rr.com)>

[mike@plazaextra.com](mailto:mike@plazaextra.com)>

John,

I want to thank you for informing me that in a couple days you should have 2011 financials that I requested to me, I will follow up with you on Tuesday. Also for letting me know that you are working with Margie to finish off Nov and Dec of 2012, and that if she doesn't do it you will, and get it to me. However, I am somewhat concerned about your responses to my requests on the passwords and access -- where you said that I had to ask Mike or Ayman. I want to make it very clear from the start that neither of them can direct you to keep materials related to Plaza Extra Supermarkets from me. Please respond in writing that you will comply with my request -- or explain in a responsive email why you will not. Should you wish to meet with Mike and myself to clear this up, please set up a meeting convenient for the two of you and I will attend. I will make myself available anytime. We have to return to working jointly and not having secrets and secret instructions internally.

Regards,

**Hisham (Shawn) Hamed**

Plaza Extra West  
US Virgin Islands  
Tel: 340.719-1870  
Fax: 340.719-1874

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)

# **EXHIBIT**

## **G**

EMAIL from Carl Hartmann dated May 13<sup>th</sup>, 2013

**Nizar A. DeWood, Esq.**

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**From:**  
**Sent:**  
**To:**  
**Cc:**  
**Subject:**

Attorney Massabki, Attorney DiRuzzo and Attorney DeWood:

I was traveling back to St. Croix, and responded to Attorney Massabki's email with the message below before I had a chance to talk to the client. My client informs me that while the 2011 financials were provided today (for which I thank you), three problems still remain:

1. There were no 2012 financials. As I said – they need not be in final form – whatever your client has needs to be provided immediately,
2. When the designee asked Mr. Gaffney for the financials, he was told the following – which is a violation of the Court's order. This must stop. Mr. Gaffney is now and has always been paid from Plaza Extra Supermarket accounts. In the hearing, he was asked if he even worked on United materials and he said "no." A request will be made courteously and professionally tomorrow for the 2012 financials in whatever form they are in. So your responsive letter should explain the contempt of any continuing refusal in clear, precise detail.

Gaffney stated that he reports only to Mike. When I asked Mike for them he asked me to sign that I received it after I signed them he gave me a cover letter stating it is for management purposes only and not to be used in litigation or a third party. Reports have a footer on each page stating for management purposes only.

3. The idea that your client is affixing restraining language or legends on the very most basic management materials is error for two reasons. First, your client has no more right to the basic financials of the stores than does mine – and thus cannot "condition" turnover. Second, your client has obviously instructed Mr. Gaffney of the same thing – more contempt. Again, please address what legal right exists for this under the order in your responsive letter.

Not that it is any of your client's business, but the immediate use is not for litigation. Folks are actually still trying to do business and operate in the real world. But that hardly matters, as the conditions are meritless. I will expect the 2012 materials completed to date, plus the related documents I have requested will be turned over tomorrow.

Thank you.

Carl Hartmann

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**From:** Carl Hartmann [mailto:[carl@carlhartmann.com](mailto:carl@carlhartmann.com)]  
**Sent:** Monday, May 13, 2013 7:36 PM

**To:** Frank Massabki  
**Cc:** Joel Holt; Japinga KiM  
**Subject:** Re: Hameds v. Yusufs/United Corporation - response to May 11, 2013 e-mail

Please attach the financials if they were not provided today.

Carl  
[carl@carlhartmann.com](mailto:carl@carlhartmann.com)

On May 13, 2013, at 7:11 PM, Frank Massabki <[FMassabki@fuerstlaw.com](mailto:FMassabki@fuerstlaw.com)> wrote:

Dear Attorney Hartmann:

I understand that you sent to Attorney DiRuzzo an e-mail dated May 11, 2013.

Attorney DiRuzzo will be out of the office for the next few days on business travel.

Nevertheless, please note that we will be providing a substantive response to your e-mail by tomorrow.

In the interim, please feel free to contact me via reply e-mail or telephone at (305) 350-5690.

Thank you.

**Frank Massabki, Esq.**  
Fuerst Ittleman David & Joseph, PL  
1001 Brickell Bay Drive, 32nd Floor  
Miami, Florida 33131  
305.350.5690 (telephone)  
305.371.8989 (fax)  
[fmassabki@fuerstlaw.com](mailto:fmassabki@fuerstlaw.com)  
[www.fuerstlaw.com](http://www.fuerstlaw.com)

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